

ORIGINAL



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MEMORANDUM

TO: Docket Control

FROM: Steve M. Olea  
Director  
Utilities Division

DATE: April 16, 2010

RE: STAFF'S RESPONSE TO ORAL COMMENTS IN THE MATTER OF PROPOSED  
RULEMAKING ON ELECTRIC ENERGY EFFICIENCY (DOCKET NO. RE-  
00000C-09-0427)

Attached is the Staff Report regarding oral comments made by interested parties on Proposed Rulemaking on Electric Energy Efficiency, pursuant to Decision No. 71436. Decision No. 71436 ordered the Utilities Division to file with the Commission's Docket Control, a document including (1) a summary of all written comments filed by interested persons after February 23, 2010, and any oral comments received at the oral proceeding in this matter; (2) the Utilities Division's responses to those comments; and (3) a revised Economic, Small Business, and Consumer Impact Statement or a memorandum explaining why no revision of the prior Economic, Small Business, and Consumer Impact Statement is necessary.

SMO:BEK:kdh

Originator: Barbara Keene

Arizona Corporation Commission

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Docket No. RE-00000C-09-0427

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**STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION**

**PROPOSED RULEMAKING ON ELECTRIC ENERGY EFFICIENCY**

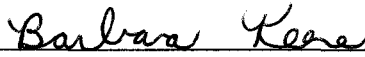
**DOCKET NO. RE-00000C-09-0427**

**STAFF RESPONSE TO ORAL COMMENTS**

**APRIL 16, 2010**

## STAFF ACKNOWLEDGMENT

The Staff Response to Oral Comments for Proposed Rulemaking On Electric Energy Efficiency, Docket No. RE-00000C-09-0427, was the responsibility of the Staff member listed below.

A handwritten signature in cursive script, reading "Barbara Keene", is positioned above a horizontal line.

Barbara Keene  
Public Utilities Analyst Manager

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## **Introduction**

The Arizona Corporation Commission ("Commission") issued Decision No. 71436 on December 18, 2009. In that Decision, the Commission ordered that a Notice of Proposed Rulemaking including proposed Electric Energy Efficiency rules be filed with the Office of the Secretary of State for publication. The Notice of Proposed Rulemaking was published in the *Arizona Administrative Register* on January 15, 2010.

Pursuant to Decision No. 71436, Staff filed the Economic, Small Business, and Consumer Impact Statement that addressed the economic impacts of the proposed Electric Energy Efficiency rules on January 22, 2010.

Decision No. 71436 requested that interested parties provide initial comments concerning the Notice of Proposed Rulemaking by filing written comments with the Commission's Docket Control by February 16, 2010, and comments in response to other interested parties' comments by February 23, 2010. On March 2, 2010, Staff filed a summary of the written comments and the Utilities Division's responses to those comments.

Decision No. 71436 also provided for an opportunity for interested parties to provide oral comments at a proceeding to be held on March 5, 2010. The Utilities Division was to file with the Commission's Docket Control, a document including (1) a summary of all written comments filed by interested persons after February 23, 2010, and any oral comments received at the oral proceeding in this matter; (2) the Utilities Division's responses to those comments; and (3) a revised Economic, Small Business, and Consumer Impact Statement or a memorandum explaining why no revision of the prior Economic, Small Business, and Consumer Impact Statement is necessary.

## **Summary of Written Comments Filed After February 23, 2010, Regarding the Proposed Electric Energy Efficiency Rules**

The Arizona PIRG Education Fund filed comments on March 9, 2010, including the names of many Arizona residents. The group urges the adoption of an Energy Efficiency Standard of at least 20 percent by 2020 and states that energy efficiency is a proven, immediate, and effective way to save ratepayers money.

The Arizona Consumers Council filed comments on March 9, 2010. The organization believes that it is important for utilities to be required to meet specific standards over a clear timeline and agrees with those who suggest 20 percent by 2020. There should be a wide variety of energy efficiency programs so that consumers can save in different ways, such as through weatherization, rebates on purchases of energy-efficient appliances, innovative financing, and programs that help low-income consumers. Consumers should be able to get easy access to clear, understandable information tailored to their homes to help them decide which energy efficiency measures will save the most money. In addition, the Arizona Consumers Council believes that consumers also benefit when businesses and government implement energy

efficiency measures. Therefore, technical assistance to businesses is just as important as such assistance is to residential users.

On March 17, 2010, William Scown filed comments in support of the proposed rules, including the goal of 22 percent by 2020 and clear, measurable, yearly ramp-up and benchmarks. Mr. Scown believes that energy efficiency is the quickest, cleanest, and cheapest way to meet Arizona's energy needs and is willing to pay a little more in utility rates for energy efficiency programs in order to have his total energy bill go down.

### **Staff's Response to the Written Comments Filed After February 23, 2010**

Staff finds that all of the written comments filed after February 23, 2010, are consistent with the proposed Electric Energy Efficiency rules as written. No modifications to the rules are required.

### **Summary of Oral Comments Regarding the Proposed Electric Energy Efficiency Rules**

Michael Patten of Roshka DeWulf & Patten spoke on behalf of Tucson Electric Power ("TEP") and UNS Electric. He expressed a concern about the impact of the proposed rules and the issue of fixed cost recovery. He stated that energy efficiency reduces sales and that part of the volumetric rate goes to paying fixed costs of operation. Therefore, Mr. Patten believes that a 2 percent decrease in kilowatt-hours sold results in a de facto 1 to 1.2 percent rate decrease. His concern is that the rules as written do not have a mechanism to compensate the companies for that rate decrease. Since TEP can't file a rate case until 2012, regulatory lag is accentuated.

Mr. Patten also expressed his concern about the targets that are set forth in the rules. He believes that the 2 percent per year may make sense for a couple of years, but it may be difficult in later years.

Jim Wontor, from Arizona Public Service Company ("APS"), stated that APS supports efforts to develop energy efficiency standards and rules for Arizona. APS believes that the 22 percent goal is very aggressive but is pleased that the proposed rules provide for flexibility on ways to meet the goal. APS agrees with TEP that the issue of financial disincentives needs to be addressed, but APS believes that the Commission is committed to addressing the issue through workshops and resolving the issue in rate cases. Therefore, the issue does not need to be resolved within the rules.

Administrative Law Judge Sarah Harpring asked Staff several questions that lead to Staff's recommended clarifications to the rules as discussed below.

### **Staff's Response to the Oral Comments**

Staff's response to TEP's concern about not recovering all of its fixed costs is that TEP can file an application for Commission approval of an accounting order to defer the unrecovered fixed costs for consideration in its next rate case. Staff offers this possibility without suggesting that Staff would necessarily support such an application. Nonetheless, an accounting order would not be prohibited in any way by the proposed rules.

Staff's recommended clarifications to the rules, based on Judge Harpring's questions, are the following:

#### ***R14-2-2401***

Staff recommends that a definition of the term "thermal envelope" as used in R14-2-2414 (C) be added to this section. The language would be "\"Thermal envelope\" means the collection of building surfaces, such as walls, windows, doors, floors, ceilings, and roofs, that separate the interior conditioned (heated and/or cooled) spaces from the exterior environment."

#### ***R14-2-2404(A)***

For clarity, Staff recommends that the language "Except as provided in R14-2-2418, in order to ensure reliable electric service at reasonable ratepayer rates and costs, by December 31, 2020, an affected utility shall, through cost-effective DSM energy efficiency programs, achieve cumulative annual energy savings, measured in kWh, equivalent to at least 22% of the affected utility's retail electric energy sales for the prior calendar year (2019)." be revised to read as "Except as provided in R14-2-2418, in order to ensure reliable electric service at reasonable ratepayer rates and costs, an affected utility shall, through cost-effective DSM energy efficiency programs, achieve cumulative annual energy savings, measured in kWh, equivalent to at least 22% by December 31, 2020."

#### ***R14-2-2404(B)***

Staff recommends that the language "An affected utility shall meet at least the following energy efficiency standard by the end of each year:" be revised to read as "An affected utility shall meet at least the following annual energy efficiency standard for each year:" for clarity.

Staff recommends that the table be revised to have a more accurate column heading and to have a second column that contains the annual energy efficiency standard. The revised table would be as shown below.

<u>CALENDAR YEAR</u>	<u>ANNUAL ENERGY EFFICIENCY STANDARD</u> (Annual Energy Savings in Each Calendar Year as a Percent of the Retail Energy Sales in the Prior Calendar Year)	<u>CUMULATIVE ENERGY SAVINGS</u>
<u>2011</u>	<u>1.25%</u>	<u>1.25%</u>
<u>2012</u>	<u>1.75%</u>	<u>3.00%</u>
<u>2013</u>	<u>2.00%</u>	<u>5.00%</u>
<u>2014</u>	<u>2.25%</u>	<u>7.25%</u>
<u>2015</u>	<u>2.25%</u>	<u>9.50%</u>
<u>2016</u>	<u>2.50%</u>	<u>12.00%</u>
<u>2017</u>	<u>2.50%</u>	<u>14.50%</u>
<u>2018</u>	<u>2.50%</u>	<u>17.00%</u>
<u>2019</u>	<u>2.50%</u>	<u>19.50%</u>
<u>2020</u>	<u>2.50%</u>	<u>22.00%</u>

***R14-2-2404(D)***

Staff recommends that the columns in the table be reversed to be consistent with Staff's recommended table in R14-2-2404(B). The table would be as shown below.

<u>CALENDAR YEAR</u>	<u>CREDIT FOR THE PRE-STANDARD ENERGY SAVINGS APPLIED IN EACH YEAR</u> (Percentage of the Total Eligible Pre-Standard Cumulative Annual Energy Savings That Shall Be Applied in the Year)	<u>CUMULATIVE APPLICATION OF THE CREDIT FOR THE PRE-STANDARD ENERGY SAVINGS IN 2016-2020</u> (Percentage of the Total Eligible Pre- Standard Cumulative Annual Energy Savings That Are Credited by the End of Each Year)
<u>2016</u>	<u>7.5%</u>	<u>7.5%</u>
<u>2017</u>	<u>15.0%</u>	<u>22.5%</u>
<u>2018</u>	<u>20.0%</u>	<u>42.5%</u>
<u>2019</u>	<u>25.0%</u>	<u>67.5%</u>
<u>2020</u>	<u>32.5%</u>	<u>100.0%</u>

***R14-2-2407(B)***

Staff recommends that the word "annual" be deleted from the sentence "An affected utility may apply for Commission approval of a DSM program or DSM measure by submitting a program proposal either as part of its annual implementation plan submitted under R14-2-2405 or through a separate application." because R14-2-2405 provides that implementation plans may be filed in each odd year. The sentence should be written as "An affected utility may apply for

Commission approval of a DSM program or DSM measure by submitting a program proposal either as part of its implementation plan submitted under R14-2-2405 or through a separate application."

***R14-2-2407(E)***

Staff recommends that "DSM" be inserted before "programs" and "program" and that "affected" be inserted before "utilities" for clarity. Therefore, the language "Staff may request modifications of on-going programs to ensure consistency with this Article. The Commission shall allow utilities adequate time to notify customers of program modifications." would be modified to read as "Staff may request modifications of on-going DSM programs to ensure consistency with this Article. The Commission shall allow affected utilities adequate time to notify customers of DSM program modifications."

***R14-2-2410(A)(3)***

Staff recommends that language be inserted to clarify that monitoring and evaluation should be done pursuant to R14-2-2415. Therefore, the language "Monitored and evaluated for cost-effectiveness." would be modified to read as "Monitored and evaluated for cost-effectiveness, pursuant to R14-2-2415."

***R14-2-2410(I)***

Staff recommends that the language "if requested to do so by the affected utility in its rate case and the affected utility provides documentation/records supporting its request in the rate application." be clarified to read as "if an affected utility requests such review in its rate case and provides documentation/records supporting its request in its rate application."

***R14-2-2414(A)***

Staff recommends that the sentence "Ratepayer-funded DSM shall be developed and implemented in a fuel-neutral manner." be clarified to read as "Ratepayer-funded DSM programs and measures shall not promote the replacement of existing, or installation of new, appliances utilizing one fuel source with similar appliances that utilize another fuel source, unless the new appliance results in reduced overall energy use."

***R14-2-2415(B)***

Staff recommends that "DSM" be inserted before "program planning" and "program improvement" for clarity. Therefore, the sentence would be "An affected utility may conduct evaluation and research, such as market studies, market research, and other technical research, for DSM program planning, product development, and DSM program improvement."

**Discussion of the Economic, Small Business, and Consumer Impact Statement**

Staff recommends that a clarification be made to the Economic, Small Business, and Consumer Impact Statement that was filed on January 22, 2010.

***Section B.1, first paragraph, second sentence***

"Rules R14-2-2401 through R14-2-2419 require affected utilities by 2020 to achieve cumulative annual energy savings, measured in kilowatt-hours, equivalent to at least 22 percent of the affected utility's retail electric energy sales for the prior calendar year (2019)."

should be replaced with:

"Rules R14-2-2401 through R14-2-2419 require affected utilities to achieve cumulative annual energy savings, measured in kilowatt-hours, equivalent to at least 22 percent by December 31, 2020."